

**Executive Summary – Enforcement Matter – Case No. 41690**  
**Esperanza Water Service Company, Inc.**  
**RN101238483**  
**Docket No. 2011-0791-IWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

IWD

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Esperanza FWSD 1 of Hudspeth County, located on the north side of State Highway 20, approximately 4.5 miles southeast of Fort Hancock, Hudspeth County

**Type of Operation:**

Reverse osmosis water treatment facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** September 23, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$4,857

**Amount Deferred for Expedited Settlement:** \$971

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$3,886

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - High

Site/RN - High

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

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**Docket No. 2011-0791-IWD-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** May 4, 2011

**Date(s) of NOE(s):** May 6, 2011

***Violation Information***

1. Failed to notify the TCEQ of a modification to the Facility. Specifically, the Respondent did not notify the TCEQ prior to increasing the percolation/evaporation beds from the approved depth of six inches to a depth of approximately four feet [30 TEX. ADMIN. CODE §§ 305.125(7) and 305.126(b) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0003807000, Part VI Standard Provisions G].
2. Failed to comply with the permitted flow limitations, which resulted in a failure to provide individual percolation/evaporation beds with the minimum resting period of five days following a period of dosing. Specifically, between January 1, 2010 and October 31, 2010, the Respondent exceeded the permitted flow limit, which resulted in 278 instances of the minimum resting period of five days not being met for the seven percolation/evaporation beds [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0003807000, Part IV Conditions of the Permit and Part V Special Provisions H].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days, submit an administratively complete permit application for a major amendment to TPDES Permit No. WQ0003807000;
- b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;
- c. Within 45 days, submit written certification of compliance with Ordering Provision a.;
- d. Within 180 days, submit written certification that the permit amendment has been obtained; and

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e. Within 270 days, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0003807000, including specific corrective actions that were implemented at the Facility to achieve compliance and documentation demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Samuel Short, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-5363; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Irene Epperson, Vice President, Esperanza Water Service Company, Inc., 1150 Southview Drive, El Paso, Texas 79928  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	9-May-2011	<b>Screening</b>	23-May-2011	<b>EPA Due</b>	
	<b>PCW</b>	3-Jun-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Esperanza Water Service Company, Inc.		
<b>Reg. Ent. Ref. No.</b>	RN101238483		
<b>Facility/Site Region</b>	6-El Paso	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41690	<b>No. of Violations</b>	2	
<b>Docket No.</b>	2011-0791-IWD-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No	
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Samuel Short	
		<b>EC's Team</b>	Enforcement Team 3	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	-5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	-\$250
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Notes: Enhancement for one NOV for the same/similar violations within the last five years and reduction for high performer classification.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$423  
Approx. Cost of Compliance \$5,100  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,750
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	2.3%	<b>Adjustment</b>	\$107
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with violation no. 1.

<b>Final Penalty Amount</b>	\$4,857
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,857
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$971
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$3,886
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Screening Date 23-May-2011

Docket No. 2011-0791-IWD-E

PCW

Respondent Esperanza Water Service Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41690

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101238483

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV for the same/similar violations within the last five years and reduction for high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) -5%

Screening Date 23-May-2011

Docket No. 2011-0791-IWD-E

PCW

Respondent Esperanza Water Service Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41690

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101238483

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(7) and 305.126(b) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0003807000, Part VI Standard Provisions G

Violation Description Failed to notify the TCEQ of a modification to the Facility. Specifically, the Respondent did not notify the TCEQ prior to increasing the percolation/evaporation beds from the approved depth of six inches to a depth of approximately four feet.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

19 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$423

Violation Final Penalty Total \$971

This violation Final Assessed Penalty (adjusted for limits) \$971

# Economic Benefit Worksheet

**Respondent** Esperanza Water Service Company, Inc.  
**Case ID No.** 41690  
**Reg. Ent. Reference No.** RN101238483  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	4-May-2011	7-Aug-2012	1.26	\$316	n/a	\$316
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to submit an administratively complete permit application for a major amendment to TPDES Permit No. WQ0003807000. Date required is the date of the investigation and the final date is the estimated date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	4-Nov-2010	4-May-2011	1.41	\$7	\$100	\$107
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The estimated cost to prepare and submit notification to the TCEQ prior to the modification of the percolation/evaporation beds. Date required is the date the violation was first documented and the final date is the date of the investigation.

Approx. Cost of Compliance

\$5,100

**TOTAL**

\$423



Screening Date 23-May-2011

Docket No. 2011-0791-IWD-E

PCW

Respondent Esperanza Water Service Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41690

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101238483

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0003807000, Part IV Conditions of the Permit and Part V Special Provisions H

Violation Description

Failed to comply with the permitted flow limitations, which resulted in a failure to provide individual percolation/evaporation beds with the minimum resting period of five days following a period of dosing. Specifically, between January 1, 2010 and October 31, 2010, the Respondent exceeded the permitted flow limit as shown in the attached table which resulted in 278 instances of the minimum resting period of five days not being met for the seven percolation/evaporation beds.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 4

507 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$4,000

Four quarterly events are recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$4,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$3,886

This violation Final Assessed Penalty (adjusted for limits) \$3,886

# Economic Benefit Worksheet

**Respondent** Esperanza Water Service Company, Inc.  
**Case ID No.** 41690  
**Reg. Ent. Reference No.** RN101238483  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for violation no. 1.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

# Effluent Limit Violation Table No. 2

**Respondent** Esperanza Water Service Company, Inc.  
**ID Number(s)** TPDES Permit No. WQ0003807000; Case No. 41690  
**Docket Number** 2011-0791-IWD-E  
**Enf. Coordinator** Samuel Short

Corresponds to Violation Number:

2

## EFFLUENT PARAMETER Permit Limit

	Flow Daily Average	Flow Daily Maximum						
<b>Month/Year</b>	10,000 gpd	20,000 gpd						
January 2010	26,716	49,000						
February 2010	21,671	40,100						
March 2010	17,023	31,400						
April 2010	21,777	37,800						
May 2010	30,384	39,500						
June 2010	24,287	74,700						
July 2010	21,900	41,000						
August 2010	27,974	45,200						
September 2010	22,684	46,000						
October 2010	11,432	65,800						

Name  
 Gallons Per Day

Abbreviation  
 gpd



## Compliance History

Customer/Respondent/Owner-Operator:	CN601179757	Esperanza Water Service Company, Inc.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101238483	ESPERANZA FWSD 1 OF HUDSPETH COUNTY	Classification: HIGH	Site Rating: 0.00
ID Number(s):	WASTEWATER WASTEWATER	EPA ID PERMIT		TX0126845 WQ0003807000
Location:	LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 20, APPROXIMATELY 4.5 MILES SOUTHEAST OF FORT HANCOCK, HUDSPETH COUNTY, TEXAS			
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	May 17, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 17, 2006 to May 17, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Samuel Short	Phone:	(512) 239-5363	

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period?       | Yes |
| 2. Has there been a (known) change in ownership/operator of the site during the compliance period? | No  |
| 3. If Yes, who is the current owner/operator?  | N/A |
| 4. If Yes, who was/were the prior owner(s)/operator(s)?  | N/A |
| 5. When did the change(s) in owner or operator occur?  | N/A |
| 6. Rating Date: 9/1/2010 Repeat Violator:  | NO  |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 08/14/2006 | (485544) |
| 2 | 11/17/2010 | (873158) |
| 3 | 05/06/2011 | (915567) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	11/19/2010	(873158)	CN601179757
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(7)		
Description:	30 TAC Chapter 305, SubChapter F 305.126(b) Failure to notify the TCEQ of plant/collection system modifications. Specifically, the entity modified the size of all beds in the system by increasing the depth of each bed from 6 inches deep (as stated in the facility's permit) to approximately 4 feet deep without providing proper notification.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to maintain compliance with the flow limits set in the facility's permit. Currently, the facility is exceeding the flow limits set in the facility's permit for daily average flow (10,000 gallons per day) and for daily maximum flow (20,000 gallons per day).		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to provide individual percolation/evaporation beds with a minimum resting period of 5 days following a period of dosing.		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ESPERANZA WATER SERVICE  
COMPANY, INC.  
RN101238483**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-0791-IWD-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Esperanza Water Service Company, Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a reverse osmosis water treatment facility located on the north side of State Highway 20, approximately 4.5 miles southeast of Fort Hancock, in Hudspeth County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 11, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Four Thousand Eight Hundred Fifty-Seven Dollars (\$4,857) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Eight Hundred Eighty-Six Dollars (\$3,886) of the administrative penalty and Nine Hundred Seventy-One Dollars (\$971) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to notify the TCEQ of a modification to the Facility, in violation of 30 TEX. ADMIN. CODE §§ 305.125(7) and 305.126(b) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0003807000, Part VI Standard Provisions G, as documented during a record review conducted on May 4, 2011. Specifically, the Respondent did not notify the TCEQ prior to increasing the percolation/evaporation beds from the approved depth of six inches to a depth of approximately four feet.
2. Failed to comply with the permitted flow limitations, which resulted in a failure to provide individual percolation/evaporation beds with the minimum resting period of five days following a period of dosing, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0003807000, Part IV Conditions of the Permit and Part V Special Provisions H, as documented during a record review conducted on May 4, 2011. Specifically, between January 1, 2010 and October 31, 2010, the Respondent exceeded the permitted flow limit as shown in the table below, which resulted in 278 instances of the minimum resting period of five days not being met for the seven percolation/evaporation beds.



**EFFLUENT PARAMETER**  
**Permit Limit**

	Flow Daily Average	Flow Daily Maximum
<b><i>Month/Year</i></b>	10,000 gpd	20,000 gpd
January 2010	26,716	49,000
February 2010	21,671	40,100
March 2010	17,023	31,400
April 2010	21,777	37,800
May 2010	30,384	39,500
June 2010	24,287	74,700
July 2010	21,900	41,000
August 2010	27,974	45,200
September 2010	22,684	46,000
October 2010	11,432	65,800

Name	Abbreviation
Gallons Per Day	gpd

**III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

**IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Esperanza Water Service Company, Inc., Docket No. 2011-0791-IWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application for a major amendment to TPDES Permit No. WQ0003807000, in accordance with 30 TEX. ADMIN. CODE ch. 305 to:

Application Review and Processing Team  
Water Quality Division, MC 148  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;
- c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a., in accordance with Ordering Provision No. 2.f. below;
- d. Within 180 days after the effective date of this Agreed Order, submit written certification that the permit amendment has been obtained, in accordance with Ordering Provision No. 2.f. below;
- e. Within 270 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0003807000, including specific corrective actions that were implemented at the Facility to achieve compliance and documentation demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be in accordance with Ordering Provision No. 2.f. below; and
- f. The written certification of compliance required by Ordering Provisions Nos. 2.c., 2.d., and 2.e. shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1206

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and

accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

  
For the Executive Director

9/27/11  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

8-17-11  
Date

Irene Epperson  
Name (Printed or typed)  
Authorized Representative of  
Esperanza Water Service Company, Inc.

Vice President  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.